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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/050,238	01/16/2002	Michael Paul Aronson	J6699/1(C)	6809
201	7590	11/04/2004	EXAMINER	
UNILEVER PATENT DEPARTMENT 45 RIVER ROAD EDGEWATER, NJ 07020			JIANG, SHAOJIA A	
			ART UNIT	PAPER NUMBER
			1617	

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/050,238	Applicant(s) ARONSON ET AL.	
	Examiner Shaojia A. Jiang	Art Unit 1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on July 30, 2004, May 17, 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-7,9-13 and 15-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-7,9-13 and 15-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 30, 2004 has been entered.

This Office Action is a response to Applicant's request for continued examination (RCE) filed July 30, 2004, and amendment and response to the Final Office Action (mailed February 4, 2004), filed May 17, 2004 wherein claims 1, 4-7, 9-13 and 15-17 have been amended; claims 14 and 18 are cancelled. Claims 2-3 and 8 are cancelled previously.

Currently, claims 1, 4-7, 9-13 and 15-17 are pending in this application.

Claims 1, 4-7, 9-13 and 15-17 are examined on the merits herein.

Applicant's amendment amending claims 1, 4-7, 9-13, filed May 17, 2004 with respect to the rejection made under 35 U.S.C. 112 first paragraph for lack of scope of enablement of record stated in the Office Action dated February 4, 2004 has been fully considered and is found persuasive to overcome the rejection since the particular agents or materials as "a inorganic, organic, or polymeric stabilizer", "a skin compatible

Art Unit: 1617

oil", "a structurant", and "an auxiliary benefit agent" have been recited in the claims.

Therefore, the said rejection is withdrawn.

The terminal disclaimer filed on May 17, 2004, disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. 6,395,690 and 6,218,348 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Therefore, the obviousness-type double patenting rejections of Claims 1, 4-7, and 9-13 as being unpatentable over claims 1-5 of U.S. Patent No. 6,395,690, and Claims 1, 4-7, and 9-13 as being unpatentable over claims 1-17 of U.S. Patent No. 6,218,348, of record stated in the Office Action dated February 4, 2004 are withdrawn.

Applicant's amendment limiting to a specific "a inorganic, organic, or polymeric stabilizer", "a skin compatible oil", "a structurant", and "an auxiliary benefit agent" in claim 1 filed May 17, 2004 with respect to the rejection of claims 1, 4-7, and 9-13 made under 35 U.S.C. 102(b) as being anticipated by Tsaur et al. (US 5,759,969) for reasons of record stated in the Office Action dated February 4, 2004 has been considered and is found persuasive to remove this particular rejection. Therefore, the said rejection is withdrawn.

Claim Rejections - 35 USC § 103

Art Unit: 1617

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4-7, 9-13 and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glenn, Jr et al. (WO 9625144, equivalent to US 6,080,708).

Glenn, Jr et al. teaches the process for making a cleansing/moisturizing dual composition (a wet-skin treatment composition) which is an oil-in-water emulsion, wherein (a) an aqueous phase comprising water and dispersion stabilizer such as trihydroxystearin having the formula (i) (according to the formula therein, the molecular weight is deemed lower than 1000 Daltons and capable of forming a network in the aqueous phase), which is a fatty acid ester or C14-C22 acyl derivative as the instantly claimed, or silicas (see US 6,080,708, abstract, col.4 line 46 to col.6) or polymeric stabilizers herein; (b) a structured oil phase (a lipid phase) comprising triglycerides and a structurant in about 75% by wt of that forms a stable 3-dimensional network comprising solid fatty esters, fatty alcohols, wax, petrolatum, with droplet size 0.1-100 microns, having viscosity within the instant claimed (see col.10-16). Glenn, Jr et al. also clearly teaches the stepwise of the process for making the composition therein (see col.17 lines 25-65), including measuring skin retention and emulsions tests at 35°C (see col.16 line 40-col.17 line 23). The reference also teaches that antimicrobial agents (preservative)

and EDTA (chelating agent) and an essential oil are used. See col. 9, line 49 - col.10, line 37', col. 17, lines 42-45. See instant claims 37-38.

Glenn, Jr et al. does not expressly disclose that the lipid phase therein is at temperature below 35⁰C, and the particular retention efficiency index, foam volume and irritation potential as claimed herein.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to obtain or determine the particular temperature herein, the particular retention efficiency index, foam volume and irritation potential in the known process of Glenn, Jr et al.

One having ordinary skill in the art at the time the invention was made would have been motivated to obtain or determine the particular temperature herein, the particular retention efficiency index, foam volume and irritation potential in the known process of Glenn, Jr et al., since the process for making the composition of Glenn, Jr et al., which is same or substantially similar to the instant composition, is known according to Glenn, Jr et al. The methods or process of obtaining or determining the particular temperature herein in the test, the particular retention efficiency index, foam volume and irritation potential are also known in the art and taught by Glenn, Jr et al.


Therefore, obtaining or determining the particular temperature herein, the particular retention efficiency index, foam volume and irritation potential based on the known methods or process and those taught by Glenn, Jr et al. is considered well within conventional skills in the art, involving merely routine skill in the art.

In view of the rejections to the pending claims set forth above, no claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Jiang, whose telephone number is (571)272-0627. The examiner can normally be reached on Monday-Friday from 9:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, Ph.D., can be reached on (571)272-0629. The fax phone number for the organization where this application or proceeding is assigned is 703.872.9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



S. Anna Jiang, Ph.D.
Primary Examiner, AU 1617
October 18, 2004